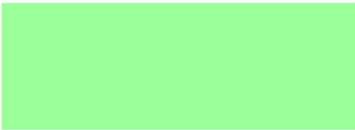


(b)(6)

U.S. Department of Homeland Security
U.S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090



U.S. Citizenship
and Immigration
Services

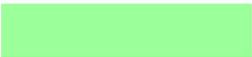


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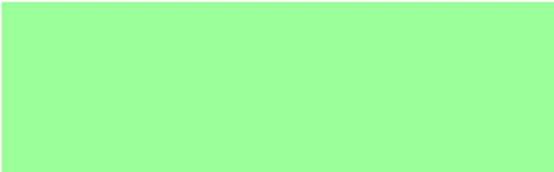
IN RE:

Applicant: 

APPLICATION:

Application for Waiver of Grounds of Inadmissibility pursuant to section 212(h) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1182(h)

ON BEHALF OF APPLICANT:



INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office (AAO) in your case. This is a non-precedent decision. The AAO does not announce new constructions of law nor establish agency policy through non-precedent decisions.

Thank you,

A handwritten signature in black ink that reads "Ron Rosenberg".

Ron Rosenberg
Chief, Administrative Appeals Office

DISCUSSION: The Field Office Director, Phoenix, Arizona, denied the waiver application and the Administrative Appeals Office (AAO) dismissed a subsequent appeal. The matter is now before the AAO on motion. The motion will be granted and the prior AAO decision withdrawn. The waiver application will be approved.

The record reflects that the applicant is a native and citizen of India who was found to be inadmissible to the United States pursuant to section 212(a)(2)(A)(i) of the Act for having been convicted of crimes involving moral turpitude. The applicant is married to a U.S. citizen and seeks a waiver of inadmissibility pursuant to section 212(h) of the Act in order to reside with her husband and children in the United States.

The field office director found that the applicant failed to establish extreme hardship to a qualifying relative and denied the application accordingly. The AAO dismissed the appeal, also finding that there was insufficient evidence in the record to establish extreme hardship.

On motion, counsel submits a brief and additional evidence in support of the motion.

A motion to reopen must state the new facts to be proved in the reopened proceeding and be supported by affidavits or other documentary evidence. 8 C.F.R. § 103.5(a)(2). A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or Service policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision. 8 C.F.R. § 103.5(a)(3). A motion that does not meet applicable requirements shall be dismissed. 8 C.F.R. § 103.5(a)(4).

Here, counsel submits a brief that cites precedential decision by the Board of Immigration Appeals (BIA) as well as new documentary evidence to support the applicant's waiver application. The submission meets the requirements of a motion. Accordingly, the motion is granted.

In addition to the evidence already described in the AAO's previous decision, the record now also contains copies of 2012 tax returns and other financial documents; documents from the children's school; and articles addressing education in India. The entire record was reviewed and considered in rendering this decision on motion.

Section 212(a)(2)(A) of the Act states in pertinent part:

- (i) [A]ny alien convicted of, or who admits having committed, or who admits committing acts which constitute the essential elements of -
 - (I) a crime involving moral turpitude . . . or an attempt or conspiracy to commit such a crime . . . is inadmissible.

Section 212(h) of the Act provides, in pertinent part:

(h) The Attorney General [now, Secretary, Homeland Security, "Secretary"] may, in his discretion, waive the application of subparagraphs (A)(i)(I) . . . of subsection (a)(2) . . . if -

(1)(A) in the case of any immigrant it is established to the satisfaction of the Attorney General that --

(i) . . . the activities for which the alien is inadmissible occurred more than 15 years before the date of the alien's application for a visa, admission, or adjustment of status,

(ii) the admission to the United States of such alien would not be contrary to the national welfare, safety, or security of the United States, and

(iii) the alien has been rehabilitated.

(B) in the case of an immigrant who is the spouse, parent, son, or daughter of a citizen of the United States or an alien lawfully admitted for permanent residence if it is established to the satisfaction of the Attorney General that the alien's denial of admission would result in extreme hardship to the United States citizen or lawfully resident spouse, parent, son, or daughter of such alien

In this case, the AAO previously found that the applicant is inadmissible under section 212(a)(2)(A)(i) of the Act for having been convicted of crimes involving moral turpitude. Specifically, the applicant was convicted of theft in 2002 on two separate occasions. This finding of inadmissibility is not contested on motion.¹

Extreme hardship is "not a definable term of fixed and inflexible content or meaning," but "necessarily depends upon the facts and circumstances peculiar to each case." *Matter of Hwang*, 10 I&N Dec. 448, 451 (BIA 1964). In *Matter of Cervantes-Gonzalez*, the Board provided a list of factors it deemed relevant in determining whether an alien has established extreme hardship to a qualifying relative. 22 I&N Dec. 560, 565 (BIA 1999). The factors include the presence of a lawful permanent resident or United States citizen spouse or parent in this country; the qualifying relative's family ties outside the United States; the conditions in the country or countries to which the qualifying

¹ In her brief, counsel notes that the AAO's initial decision did not discuss the applicant's two theft convictions in 1997, presumably because these convictions could be waived under section 212(h)(1)(A) of the Act. Because the applicant had not met the higher burden of establishing eligibility for a waiver under section 212(h)(1)(B) of the Act, the AAO need not discuss whether the applicant's 1997 convictions met the requirements for a waiver under section 212(h)(1)(A) of the Act.

relative would relocate and the extent of the qualifying relative's ties in such countries; the financial impact of departure from this country; and significant conditions of health, particularly when tied to an unavailability of suitable medical care in the country to which the qualifying relative would relocate. *Id.* The Board added that not all of the foregoing factors need be analyzed in any given case and emphasized that the list of factors was not exclusive. *Id.* at 566.

The Board has also held that the common or typical results of removal and inadmissibility do not constitute extreme hardship, and has listed certain individual hardship factors considered common rather than extreme. These factors include: economic disadvantage, loss of current employment, inability to maintain one's present standard of living, inability to pursue a chosen profession, separation from family members, severing community ties, cultural readjustment after living in the United States for many years, cultural adjustment of qualifying relatives who have never lived outside the United States, inferior economic and educational opportunities in the foreign country, or inferior medical facilities in the foreign country. See generally *Matter of Cervantes-Gonzalez*, 22 I&N Dec. at 568; *Matter of Pilch*, 21 I&N Dec. 627, 632-33 (BIA 1996); *Matter of Ige*, 20 I&N Dec. 880, 883 (BIA 1994); *Matter of Ngai*, 19 I&N Dec. 245, 246-47 (Comm'r 1984); *Matter of Kim*, 15 I&N Dec. 88, 89-90 (BIA 1974); *Matter of Shaughnessy*, 12 I&N Dec. 810, 813 (BIA 1968).

However, though hardships may not be extreme when considered abstractly or individually, the Board has made it clear that "[r]elevant factors, though not extreme in themselves, must be considered in the aggregate in determining whether extreme hardship exists." *Matter of O-J-O-*, 21 I&N Dec. 381, 383 (BIA 1996) (quoting *Matter of Ige*, 20 I&N Dec. at 882). The adjudicator "must consider the entire range of factors concerning hardship in their totality and determine whether the combination of hardships takes the case beyond those hardships ordinarily associated with deportation." *Id.*

The actual hardship associated with an abstract hardship factor such as family separation, economic disadvantage, cultural readjustment, et cetera, differs in nature and severity depending on the unique circumstances of each case, as does the cumulative hardship a qualifying relative experiences as a result of aggregated individual hardships. See, e.g., *Matter of Bing Chih Kao and Mei Tsui Lin*, 23 I&N Dec. 45, 51 (BIA 2001) (distinguishing *Matter of Pilch* regarding hardship faced by qualifying relatives on the basis of variations in the length of residence in the United States and the ability to speak the language of the country to which they would relocate). For example, though family separation has been found to be a common result of inadmissibility or removal, separation from family living in the United States can also be the most important single hardship factor in considering hardship in the aggregate. See *Salcido-Salcido*, 138 F.3d at 1293 (quoting *Contreras-Buenfil v. INS*, 712 F.2d 401, 403 (9th Cir. 1983)); but see *Matter of Ngai*, 19 I&N Dec. at 247 (separation of spouse and children from applicant not extreme hardship due to conflicting evidence in the record and because applicant and spouse had been voluntarily separated from one another for 28 years). Therefore, we consider the totality of the circumstances in determining whether denial of admission would result in extreme hardship to a qualifying relative.

After a careful review of the entire record, including the additional documentation submitted with the motion, the record establishes that if the applicant's children remain in the United States without their mother, they would suffer extreme hardship. In *Salcido-Salcido v. INS*, 138 F.3d 1292, 1293 (9th Cir. 1998), the Ninth Circuit Court of Appeals, referring to the separation of an alien from qualifying relatives, held that "the most important single hardship factor may be the separation of the alien from family living in the United States," and that "[w]hen the BIA fails to give considerable, if not predominant, weight to the hardship that will result from family separation, it has abused its discretion." (Citations omitted). The separation of the applicant from her two minor children "would deprive h[er] family of various forms of non-economic familial support and that it would disrupt family unity." *United States v. Arrieta*, 224 F.3d 1076, 1082 (9th Cir. 2000). The record reflects that the applicant has been a homemaker, caring for her children full-time, while her husband works a demanding job that often requires travel. The record also contains evidence that the applicant is very involved in her children's upbringing and that she has been the children's primary caretaker their entire lives. Considering these unique circumstances cumulatively, the hardship the applicant's children would experience if they remained in the United States is extreme, going beyond those hardships ordinarily associated with inadmissibility.

In addition, if the couple's daughter relocated to India to be with her mother, she would also experience extreme hardship. The record shows that the couple's daughter is currently thirteen years old and their son is nine years old. According to the applicant's husband, Mr. [REDACTED] the children were born and raised in the United States, are very accustomed to the way of life in the United States, and do not speak any of the native languages of India. In addition, the record shows that both of the couple's children are intellectually gifted and excelling in school to the extent that their daughter was named Student of the Year at a nationally-ranked top school in the country. The applicant has submitted articles addressing the poor quality of public education in India. The record supports Mr. [REDACTED] contention that relocating to India would deprive the children of the educational opportunities in the United States and deprive them of maximizing their future potential.

Counsel's reliance on *Matter of Kao and Lin*, 23 I&N Dec. 45 (BIA 2001), and *Matter of O-J-O-*, 21 I&N Dec. 381 (BIA 1996), is persuasive. The applicant's children are similar to the adolescents in both BIA cases in that the children have lived their entire lives in the United States, including critical formative years, they are completely integrated and assimilated into American culture and society, they do not have language capabilities sufficient for daily life in another country, and they would have their education significantly disrupted if they relocated to another country. The evidence of hardship considered in the aggregate and in light of the *Cervantes-Gonzalez* factors cited above, supports a finding that the applicant's children, particularly the couple's daughter, would face extreme hardship if the applicant is refused admission.

As the record establishes extreme hardship to the applicant's daughter, it is unnecessary to examine hardship to the applicant's spouse.

The applicant also merits a waiver of inadmissibility as a matter of discretion.

In discretionary matters, the alien bears the burden of proving that positive factors are not outweighed by adverse factors. See *Matter of T-S-Y-*, 7 I&N Dec. 582 (BIA 1957).

The adverse factors in the present case are the applicant's convictions for theft. The favorable and mitigating factors in the present case include: the applicant's significant family ties to the United States, including her U.S. citizen husband and two U.S. citizen children; the hardship to the applicant's entire family if she were refused admission; numerous letters of support describing the applicant as a dedicated, nurturing, and caring mother, a loving wife, and a generous and supportive friend; the applicant's volunteer work in the community and in her children's schools; and the applicant's lack of any arrests or criminal convictions for more than ten years.

Although the applicant's criminal convictions are serious and cannot be condoned, when taken together, the favorable factors in the present case outweigh the adverse factors, such that a favorable exercise of discretion is warranted.

In application proceedings, it is the applicant's burden to establish eligibility for the immigration benefit sought. Section 291 of the Act, 8 U.S.C. § 1361. Here, that burden has been met.

ORDER: The motion is granted and the prior AAO decision dismissing the appeal is withdrawn. The waiver application is approved.